

## **ILPA'S RESPONSE TO THE EQUALITY IMPACT ASSESSMENT: POINTS BASED SYSTEM YOUTH MOBILITY SCHEME (TIER 5)**

ILPA is a professional association with around 1,000 members, who are barristers, solicitors and advocates practising in all aspects of immigration, asylum and nationality law. Academics, non-government organisations and others working in this field are also members. ILPA exists to promote and improve the giving of advice on immigration and asylum, through training, disseminating information and providing evidence-based research and opinion. ILPA is represented on numerous government and other stakeholder and advisory groups and has given its views to the Border and Immigration Agency (BIA) throughout the development of the Points-Based System.

### **1. Does this policy put in place any barriers to full participation from members of the community or communities you represent?**

Yes, many groups will face difficulties in qualifying under Tier 5. In particular, the policy proposals for the Youth Mobility Scheme (part of Tier 5) raises issues of:

- a. Direct and Indirect age discrimination
- b. Indirect (and arguably direct) race discrimination
- c. Indirect discrimination on the grounds of sex and religious belief

It is useful to note that throughout, the terms “direct” and “indirect” discrimination are used. These should be given the following meaning:

Direct discrimination occurs when someone is treated less favourably than another on grounds of his or her perceived or actual (age), disability, gender, nationality, religion, gender orientation or sexual orientation.

Indirect discrimination occurs where the effect of certain requirements, conditions or practices imposed has a disproportionately adverse impact on one group or other. Indirect discrimination generally occurs when a rule or condition, which is applied equally to everyone, can be met by a considerably smaller proportion of people from a particular group.

It is also useful to remember that race discrimination includes discrimination on the grounds of nationality.

### **2. What opportunities, and what challenges, does this policy offer?**

ILPA has already commented in general terms in relation to the Points-Based System as a whole. However, as this policy does not deal with specifics, but rather the general principles which will govern the Youth Mobility Scheme, we have not repeated these concerns here. For further details please refer to the general comments raised by ILPA in the response to consultation on Tier 1 which address wider issues relating to the Points-Based System as a whole and is appended hereto.

It is incumbent upon the Border and Immigration Agency to allow adjustments to the Points-Based system to minimise the adverse impact that it will have upon certain groups, including women, disabled people, certain nationalities and certain age groups.

The challenges and the opportunities are to design a system which allows the benefits identified by the BIA to emanate from this scheme without preventing access to certain groups due to unnecessary or inflexible policies.

The following must be considered when designing policy:

1. ensuring that the Youth Mobility Scheme is accessible to all and if not, providing objective grounds based on firm evidence for differences in treatment for this;
2. ensuring that the documentary requirement/ processes are designed to include adjustment mechanisms, to avoid indirect discrimination on grounds of age, disability, gender, nationality, religion, gender orientation, sexual orientation and other categories relating to age;
3. ensuring that processes and timings at each of the diplomatic posts and outsourced partners do not create direct or indirect discrimination, either by applying a universal rule stringently and without regard for the indirectly discriminatory impact this may have on certain groups or by having such different practices, procedures and timings that certain groups are adversely affected, for example where nationals of country X have a noticeably worse service than nationals of country Y (creating the grounds for an accusation of direct discrimination).

### **3. Will this policy have a disproportionate impact, positive or negative, on any particular groups or communities?**

Yes. The following policies will have disproportionate effects and give risk to discrimination or to a risk of discrimination:

1. Preventing access to Youth Mobility Scheme for visa nationals – This policy discriminates against nationals of particular countries, visa nationals. The policy (at point 10 (a)) already aims to set objective criteria by which countries could be allowed to participate in the scheme. By further broadening this to exclude visa nationals, directly discriminates against individuals from these countries without any objective justification for doing so. It is incumbent upon the Border and Immigration Agency to design a policy which is flexible enough to prevent discrimination. Barring individuals from a largely static list of countries (the visa national list) is not flexible enough because it does not allow nationals of those countries who do meet the objective requirements of the scheme to participate, simply because they remain subject to the UK's visa regime.

In addition, there are many individuals who are visa nationals but also permanent residents of another country not subject to the visa regime. The risk profile of these individuals should be considered on the basis of their country of permanent residence.

The language requirement will especially impact those who are on the cusp of an age category and who will therefore not receive (enough) points for age because of the delay in the timing of their application caused by the need to sit a test before the application may be submitted. This therefore raises issues of indirect race discrimination.

2. The age criterion – Limiting the scheme to those aged 18-30 amounts to treating people differently on the basis of age. The Border and Immigration Agency contends that this is because young nationals return home from their experiences in the UK and encourage future trade and tourism. The same benefits apply to having those aged over 30 participate. Indeed, it is possible that those over 30 would give greater benefits in this regard, being generally wealthier than the young and being more likely to have progressed to an extent in their careers that they could effect trade with the UK.

3. No accompanying dependants - ILPA is concerned that by preventing dependants accompanying the main applicant, women will be discouraged from participating in this scheme. Women are more likely to be the primary carer for a child than men<sup>1</sup> and if they are unable to bring their children with them, will be prevented from applying. In addition, women who have children in their twenties will be discriminated against (which raises a combination of gender and other factors, as ages at which people have their first children do differ from country to country and faith and cultural considerations can play a role<sup>2</sup>). The BIA should therefore allow dependant children to accompany the main applicant to prevent this discrimination.
4. Funds requirement – To obtain entry clearance it will be necessary to demonstrate that a certain amount of money is available to the migrant to allow for set up/ maintenance costs within the UK. This is a proportionately higher cost to a Mexican national than an Australian national, although those coming under the scheme are permitted to work to support themselves once in the UK. The BIA must ensure that this cost is not so high as to prevent certain nationalities applying under the Youth Mobility Scheme to prevent indirectly discriminatory on grounds of race.
5. Deemed Sponsorship (“DS”) versus Certificates of Sponsorship – The Border and Immigration Agency envisage that certain countries will have deemed sponsorship and other will require certificates of sponsorship issued by the Government of that country. There is a high risk of discrimination here if the assigning of a country to a particular category cannot be justified on the basis of evidence. This will be exacerbated if the procedure for obtaining a Certificate of Sponsorship is so administratively or otherwise difficult that Governments who are within the criteria for the Youth Mobility Scheme but are not granted Deemed Sponsorship status are prevented by procedural hurdles from offering this to their nationals. If, as the Border and Immigration Agency envisages, this is outsourced to an agency, care must be taken to ensure that the administrative function is not so onerous as to result in dramatically higher fees for certain nationalities who do not benefit from Deemed Sponsorship.

**4. If you have identified any disproportionate impacts, what changes could we make to this policy to mitigate them?**

1. Visa nationals – The BIA should provide objective criteria by which to profile risk rather than relying on the list of visa nationals.
2. Age – The Border and Immigration Agency should allow access to this scheme (or ensure that another part of Tier 5 gives access) to all ages.
3. Dependants – The Border and Immigration Agency should allow dependants to accompany the main applicant
4. Funds requirement – The Border and Immigration Agency should ensure that the funds requirement is achievable by all and dispense with this requirement altogether where a job offer is in place or where it can be demonstrated that the individual’s skills are in such short demand that s/he is extremely unlikely to remain without a job offer for any significant period

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<sup>1</sup> For examples from the UK see for example the Government Gender Equality Unit, work on the equal pay gap, in particular at [http://www.womenandequalityunit.gov.uk/pay/pay\\_facts.htm](http://www.womenandequalityunit.gov.uk/pay/pay_facts.htm) and A Gender Audit of Statistics: comparing the position of women and men in Scotland Esther Breitenbach and Fran Wasoff, University of Edinburgh Research Findings 31/2007, see [www.scotland.gov.uk/Resource/Doc/172924/0048233.pdf](http://www.scotland.gov.uk/Resource/Doc/172924/0048233.pdf)

<sup>2</sup> See the United Nations Statistics Division Demographic and Social Statistics – Age of mother at birth of first child ever born. <http://unstats.un.org/unsd/Demographic/sconcerns/natality/natmethods.htm>

9. Deemed Sponsorship– One solution is to allow all countries deemed sponsorship. If this is not the chosen route then the Border and Immigration Agency must ensure that any criteria are based on objective evidence which allow them to profile risk if it is not to face challenges to the Deemed Sponsorship provisions.

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12 March 2008